

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE – NASHVILLE DIVISION**

IN RE:	)	
	)	
John Ernest Mason, Jr.,	)	Case No. 16-06096-CW3-7
Bianca Nehring Mason,	)	Chapter 7
	)	Judge Charles M. Walker
Debtors,	)	
_____	)	
	)	
John Ernest Mason, Jr.,	)	
Bianca Nehring Mason,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adv. Pro. No. _____
	)	
Internal Revenue Service and	)	
The United States of America	)	
	)	
Defendants.	)	

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**DEBTORS' COMPLAINT TO DETERMINE DISCHARGEABILITY  
OF INDIVIDUAL FEDERAL INCOME TAX LIABILITIES**

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The Debtors, John Ernest Mason, Jr. and Bianca Nehring Mason, by and through counsel, request the Court determine that their individual federal income tax liabilities for the years 2008, 2009, and 2010 are dischargeable. In support of that request, the Debtors state as follows:

1. The Debtors filed their voluntary Chapter 7 petition in bankruptcy on August 26, 2016.
2. This is an action to determine the dischargeability of the Debtors' individual federal income tax liability to the United States for the tax years 2008, 2009 and 2010.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper under 11 U.S.C. § 1409(a). This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

### **SCHEDULED, DISCHARGEABLE, NON-PRIORITY TAX DEBTS**

4. On Schedule F filed with this Court, the Debtors listed a debt (for individual federal income tax) to the Internal Revenue Service for tax year 2008 in the amount of \$229,261.38.

5. On Schedule F filed with this Court, the Debtors listed a debt (for individual federal income tax) to the Internal Revenue Service for tax year 2009 in the amount of \$199,007.03.

6. On Schedule F filed with this Court, the Debtors listed a debt (for individual federal income tax) to the Internal Revenue Service for tax year 2010 in the amount of \$214,300.53.

### **BASIS FOR DISCHARGEABILITY**

7. The Debtors' individual federal income tax liabilities for the years 2008, 2009 and 2010 are not excepted from discharge under 11 U.S.C. § 523(a)(1):

- a. The Debtors' voluntary petition in bankruptcy was filed more than three years after the dates on which their individual income tax returns were filed for 2008, 2009 and 2010 (hereafter referenced as the "Discharge Years") **[11 USC § 523(a)(1)(A) and § 507(a)(8)(A)(i)]**.
- b. The tax liabilities at issue reported on the returns for the Discharge Years, or assessed after examination, all have been assessed more than two hundred forty

(240) days before the date of the filing of the Debtors' petition **[11 USC § 523(a)(1) and §507(a)(8)(A)(ii)]**.

- c. A return for each of the Discharge Years was filed more than two (2) years before the filing of the bankruptcy petition **[11 USC § 523(a)(1)(B)]**.
- d. The Debtors have not made a fraudulent return for or willfully attempted in any manner to evade or defeat any of the liabilities for which this determination of dischargeability has been requested **[11 USC § 523(a)(1)(C)]**.
- e. All of the penalties assessed for each of the years 2008, 2009 and 2010 are attributable to an event in each year occurring more than three (3) years before the Debtors' filing of their bankruptcy petition **[11 U.S.C. § 523(a)(7)(A) and (B)]**.

#### **DISCHARGE OF TAX DEBT**

8. The entire amount of the tax shown on each of the returns for the Discharge Years, plus the additional assessments made by the Internal Revenue Service for penalty and interest, are dischargeable.

9. None of the individual income tax, accumulated penalties and interest owed by the Debtors for 2008, 2009 and 2010 are excepted from discharge under 11 U.S.C. § 523(a).

10. All of the Debtors' individual income tax liabilities for the years 2008, 2009 and 2010 do not fall within the exceptions to discharge under 11 U.S.C. §523(a) and are dischargeable.

**WHEREFORE**, the Plaintiff prays that the Court determine that, pursuant to the provisions of 11 U.S.C. § 523(a), the Debtors' personal income tax obligations and accumulated penalty and interest for tax years 2008, 2009 and 2010 are not excepted from discharge and are therefore discharged.

The Plaintiff prays for such other and further relief as may be just.

DATED this the 28<sup>th</sup> day of September, 2016.

Respectfully submitted,

**LAW OFFICE OF JOHN C. McLEMORE, PLLC**

/s/ John C. McLemore

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